



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2018-0637; FRL-9987-95-Region 1]

#### **Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2010 Sulfur Dioxide NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from Maine that addresses the infrastructure and interstate transport requirements of the Clean Air Act (CAA or Act) for the 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0637 at <https://www.regulations.gov>, or via email to [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1657, email [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

I. Background and Purpose

II. What guidance is EPA using to evaluate this SIP submission?

III. State Submission and EPA’s Analysis

A. Section 110(a)(2)(A) – Emission limits and other control measures

- B. Section 110(a)(2)(B) – Ambient air quality monitoring/data system
- C. Section 110(a)(2)(C) – Program for enforcement of control measures and for construction or modification of stationary sources
  - 1. Sub-element 1: Enforcement of SIP measures
  - 2. Sub-element 2: PSD program for major sources and major modifications
  - 3. Sub-element 3: Preconstruction permitting for minor sources and minor modifications
- D. Section 110(a)(2)(D) – Interstate transport
  - 1. Sub-element 1: Section 110(a)(2)(D)(i)(I) – Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2)
    - a. State's Analysis
    - b. EPA's Prong 1 Evaluation
    - c. EPA's Prong 2 Evaluation
  - 2. Sub-element 2: Section 110(a)(2)(D)(i)(II) – PSD (prong 3)
  - 3. Sub-element 3: Section 110(a)(2)(D)(i)(II) – Visibility protection (prong 4)
  - 4. Sub-element 4: Section 110(a)(2)(D)(ii) – Interstate pollution abatement
  - 5. Sub-element 5: Section 110(a)(2)(D)(ii) – International pollution abatement
- E. Section 110(a)(2)(E) – Adequate resources
  - 1. Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues
  - 2. Sub-element 2: State board requirements under section 128 of the CAA
- F. Section 110(a)(2)(F) – Stationary source monitoring system
- G. Section 110(a)(2)(G) – Emergency powers
- H. Section 110(a)(2)(H) – Future SIP revisions
- I. Section 110(a)(2)(I) – Nonattainment area plan or plan revisions under part D

J. Section 110(a)(2)(J) – Consultation with government officials; public notifications;  
prevention of significant deterioration; visibility protection

1. Sub-element 1: Consultation with government officials

2. Sub-element 2: Public notification

3. Sub-element 3: PSD

4. Sub-element 4: Visibility protection

K. Section 110(a)(2)(K) – Air quality modeling/data

L. Section 110(a)(2)(L) – Permitting fees

M. Section 110(a)(2)(M) – Consultation/participation by affected local entities

#### IV. Proposed Action

#### V. Statutory and Executive Order Reviews

### **I. Background and Purpose**

On April 19, 2017, the Maine Department of Environmental Protection (ME DEP) submitted its infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS. Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2010 SO<sub>2</sub> NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.” This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA’s taking any other action. Section 110(a)(2) includes the specific elements that “each such plan” must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA’s “Final New Source Review (NSR) Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA’s approach to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” *See* 79 FR 27241 at 27242–45.

## **II. What guidance is EPA using to evaluate this SIP submission?**

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled “Guidance

on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2)” (2013 guidance).<sup>1</sup>

With respect to Section 110(a)(2)(D)(i), sometimes referred to as the Good Neighbor provision, EPA notes that although SO<sub>2</sub> is emitted from a similar universe of point and nonpoint sources, interstate transport of SO<sub>2</sub> is unlike the transport of fine particulate matter (PM<sub>2.5</sub>) or ozone in that SO<sub>2</sub> is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO<sub>2</sub> is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO<sub>2</sub> do not decrease as quickly with distance from the source as Pb, because of the physical properties and typical release heights of SO<sub>2</sub>. Emissions of SO<sub>2</sub> travel farther and have wider ranging impacts than emissions of Pb, but do not travel far enough to be treated in a manner similar to ozone or PM<sub>2.5</sub>. The approaches that EPA has adopted for ozone or PM<sub>2.5</sub> transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source. SO<sub>2</sub> transport is therefore a unique case and requires a different approach. Given the physical properties of SO<sub>2</sub>, EPA selected the “urban scale”—a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources—to evaluate these SIP submissions for SO<sub>2</sub> transport.<sup>2</sup> As such, EPA utilized

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<sup>1</sup> This memorandum and other referenced guidance documents and memoranda are included in the docket for today’s action.

<sup>2</sup> For the definition of spatial scales for SO<sub>2</sub>, please see 40 CFR part 58, appendix D, section 4.4 (“Sulfur Dioxide (SO<sub>2</sub>) Design Criteria”). For further discussion on how EPA is applying these definitions with respect to interstate transport of SO<sub>2</sub>, see EPA’s proposal on Connecticut’s SO<sub>2</sub> transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

an assessment up to 50 km from point sources when considering possible transport of SO<sub>2</sub> from Maine to downwind states.

As discussed in Section III.D of this document, EPA first reviewed ME DEP's analysis to assess how Maine evaluated the transport of SO<sub>2</sub> to other states, the types of information used in the analysis and the conclusions drawn by the ME DEP. EPA then conducted a weight of evidence analysis, including ME DEP's submission and other available information, including air quality, emission sources, and emission trends within the state and in neighboring states to which SO<sub>2</sub> emission sources in Maine could potentially contribute or interfere.<sup>3</sup>

### **III. State Submission and EPA's Analysis**

EPA is soliciting comment on our evaluation of ME DEP's infrastructure SIP submission in this notice of proposed rulemaking (NPRM). In ME DEP's submission, a detailed list of Maine Laws and previously SIP-approved Air Quality Regulations show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2010 SO<sub>2</sub> NAAQS. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

#### *A. Section 110(a)(2)(A) – Emission limits and other control measures*

This section (also referred to in this action as an element, e.g., Element A) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when

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<sup>3</sup> This proposed approval action is based on the information contained in the administrative record for this action, and does not prejudice any other future EPA action that may make other determinations regarding any of the subject states' air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and EPA's analyses of information that has become available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to EPA's SO<sub>2</sub> Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

nonattainment planning requirements are due.<sup>4</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

ME DEP statutory authority with respect to air quality is set out in 38 Maine Revised Statutes Annotated ("MRSA") Chapter 4, "Protection and Improvement of Air."<sup>5</sup> Statutory authority to establish emission standards and regulations implementing ambient air quality standards is contained in 38 MRSA Chapter 4, sections 585 and 585-A. Maine's infrastructure submittal for this element cites Maine laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. For instance, ME DEP cites 38 MRSA § 603-A, a state law that establishes a statewide sulfur limit of 15 parts per million (ppm) for distillate oil and 0.5% by weight for residual oil. On April 24, 2012, EPA incorporated these statutory limits into Maine's SIP. *See* 77 FR 24385. In addition, ME DEP cited its SIP approved new source review permitting regulation 06-096 CMR Chapter 115, "Emission License Regulations" last amended on August 1, 2016. *See* 81 FR 50353.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2010 SO<sub>2</sub> NAAQS. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

*B. Section 110(a)(2)(B) – Ambient air quality monitoring/data system*

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<sup>4</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (November 12, 2008).

<sup>5</sup> ME DEP consists of the Board of Environmental Protection ("Board") and a Commissioner. 38 MRSA § 341-A(2). In general, the Board is authorized to promulgate "major substantive rules" and the Commissioner has rulemaking authority with respect to rules that are "not designated as major substantive rules." *Id.* § 341-H.



This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Pursuant to authority granted to it by 38 MRSA §§ 341-A(1) and 584-A, ME DEP operates an air quality monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for SO<sub>2</sub> on October 25, 2018.<sup>6</sup> Furthermore, ME DEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that ME DEP meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2010 SO<sub>2</sub> NAAQS.

*C. Section 110(a)(2)(C) – Program for enforcement of control measures and for construction or modification of stationary sources*

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NNSR requirements.

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<sup>6</sup> See EPA approval letter located in the docket for this action.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

*1. Sub-element 1: Enforcement of SIP measures*

ME DEP identifies the sources of its authority to enforce the measures it cites to satisfy Element A as 38 MRSA Section 347-A, "Violations," 38 MRSA Section 347-C, "Right of inspection and entry," 38 MRSA Section 348, "Judicial Enforcement," and 38 MRSA Section 349, "Penalties," which include processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by 06-096 CMR Chapter 115 "Major and Minor Source Air Emission License Regulations," which requires best available control technology (BACT) controls for PSD sources, including for SO<sub>2</sub>. EPA proposes to find that Maine meets the enforcement requirement of section 110(a)(2)(C) with respect to the 2010 SO<sub>2</sub> NAAQS.

*2. Sub-element 2: PSD program for major sources and major modifications*

PSD applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to the relevant NAAQS. ME DEP's EPA-approved PSD rules, contained at 06-906 CMR Chapter 100 "Definitions Regulations" and 06-096 CMR Chapter 115 "Major and Minor Source Air Emission License Regulations," contain provisions that address applicable requirements for all regulated NSR pollutants.

In our proposal on March 26, 2018 regarding the submittal of infrastructure SIPs for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS by the ME DEP, we explained how Maine's SIP meets this sub-element for PSD. *See* 83 FR 12905. On June 18, 2018, we took final action

approving those multi-pollutant infrastructure SIP submissions, including finding that Maine's SIP satisfies this sub-element. *See* 83 FR 28157. Maine's PSD SIP has not changed since our June 18, 2018 approval, and no new PSD requirements have arisen; therefore, based on our rationale contained in the March 26, 2018 document, EPA proposes to find that Maine has met the PSD requirement of section 110(a)(2)(C) with respect to the 2010 SO<sub>2</sub> NAAQS. For the purposes of today's rulemaking on Maine's infrastructure SIP, EPA reiterates that NSR Reform is not in the scope of this action.

*3. Sub-element 3: Preconstruction permitting for minor sources and minor modifications*

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources (minor NSR), an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. Maine's minor NSR program is contained within 06-096 CMR Chapter 115, "Major and Minor Source Air Emission License Regulations." EPA last approved revisions to Chapter 115 on August 1, 2016 (81 FR 50353). ME DEP and EPA rely on Chapter 115 to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2010 SO<sub>2</sub> NAAQS.

We are proposing to find that Maine has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2010 SO<sub>2</sub> NAAQS.

*D. Section 110(a)(2)(D) – Interstate transport*

Section 110(a)(2)(D) of the CAA contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to

nonattainment and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed in the following sections, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

*1. Sub-element 1: Section 110(a)(2)(D)(i)(I) – Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2)*

In this section, we provide an overview of Maine’s 2010 SO<sub>2</sub> transport analysis, as well as EPA’s evaluation of prongs 1 and 2. Table 1 shows emission trends for Maine and its neighboring state New Hampshire.<sup>7</sup> The table will be referenced as part of EPA’s analysis.<sup>8</sup>

Table 1: Statewide SO <sub>2</sub> Data (tons per year) for Maine and New Hampshire					
State	2000	2005	2010	2017	SO <sub>2</sub> reduction, 2000–2017 (%)
Maine	57,906	32,397	17,020	10,447	82.0
New Hampshire	68,768	63,634	35,716	6,401	90.7

a. State’s Analysis

In Maine’s April 19, 2017 infrastructure SIP submission addressing the 2010 SO<sub>2</sub> NAAQS, the state explicitly refers to the interstate transport provision of CAA Section 110(a)(2)(D)(i). In its April 19, 2017 SIP submittal, the ME DEP stated that sources within Maine do not

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<sup>7</sup> EPA also analyzed potential impacts from Maine sources on Massachusetts, which is on the other side of NH and is approximately 24 km from Maine. There are no sources in Massachusetts within 50 km of Maine that emitted over 100 tons per year of SO<sub>2</sub>. The closest source in Maine that is over 100 tons per year of SO<sub>2</sub> is approximately 95 km away from Massachusetts. Maine sources are not expected to contribute to a nonattainment area within Massachusetts, and we do not foresee any interference with maintenance of the 2010 SO<sub>2</sub> NAAQS.

<sup>8</sup> This emissions trends information was derived from EPA’s webpage <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>, accessed on November 1, 2018.

significantly contribute to any monitored SO<sub>2</sub> violations in another state. Maine based its assertion on EPA's air quality designations for the 2010 SO<sub>2</sub> NAAQS and included a reference to EPA's Round 1 designations. *See* ["https://www.gpo.gov/fdsys/pkg/FR-2013-08-05/pdf/2013-18835.pdf"](https://www.gpo.gov/fdsys/pkg/FR-2013-08-05/pdf/2013-18835.pdf) 78 FR 47191, August 5, 2013. Maine also referenced its PSD permit program, which assists the State in controlling future emissions from new or modified major sources.

The SIP submission addresses prong 1 of Section 110(a)(2)(D)(i) by stating that "Maine sources do not significantly contribute to any monitored sulfur dioxide violations in other states...." However, the SIP submission does not appear to specifically address whether Maine interferes with maintenance of the NAAQS in a nearby state (prong 2). On October 29, 2018, Maine submitted a letter to EPA clarifying the State intended to demonstrate in its April 19, 2017 SIP submittal that it does not interfere with maintenance of the NAAQS in other states (prong 2). Therefore, EPA concludes that Maine's submission was intended to address both prongs of the interstate transport provision given that the submission refers to the entirety of CAA section 110(a)(2)(D)(i)(I).

#### b. EPA's Prong 1 Evaluation

EPA proposes to find that Maine's SIP submittal meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), prong 1 for the 2010 SO<sub>2</sub> NAAQS, as discussed below. As described below, we have analyzed the air quality, emission sources and emission trends in Maine and New Hampshire. Based on that analysis, we propose to find that Maine will not significantly contribute to nonattainment of the 2010 SO<sub>2</sub> NAAQS in any other state.

We reviewed 2015-2017 SO<sub>2</sub> concentrations design values at monitors with data sufficient to produce valid 1-hour SO<sub>2</sub> design values for Maine and neighboring states.<sup>9</sup> In Table 2 below, we have included monitoring data satisfying any of the following selection criteria: 1) all of the monitor data from Maine; 2) the monitor with the highest SO<sub>2</sub> level in New Hampshire; 3) the monitor in New Hampshire closest to the Maine border; and 4) all monitors in New Hampshire within approximately 50 km of the border. EPA reviewed these ambient air quality data in Maine and New Hampshire to see whether there were any monitoring sites, particularly near the Maine border, with elevated SO<sub>2</sub> concentrations that might warrant further investigation with respect to interstate transport of SO<sub>2</sub> from emission sources near any given monitor. As shown, there are no violating design values in Maine or New Hampshire.

State/ Area	Scenario	Site ID	Approximate Distance to Maine/New Hampshire Border (km)	2013-2015 Design Value (ppb)	2014-2016 Design Value (ppb)	2015-2017 Design Value (ppb)
Maine/ Portland	1	230050029	57	12	11	9
Maine/ Hancock County	1	230090103	219	2	1	1
Maine/ Eliot <sup>a</sup>	1	230310009		NA <sup>b</sup>	NA <sup>b</sup>	NA <sup>b</sup>
New Hampshire/ Merrimack County	4	330131006	46	20	20	15
New Hampshire/ Rockingham County-Pierce Island	2, 3	330150014	<1	29	22	16

a. The Sawgrass Lane monitor collected SO<sub>2</sub> concentration data from October 24, 2014 to April 1, 2016. The maximum 1-hour SO<sub>2</sub> concentration observed from this monitor was 37.7 parts per billion (ppb) on January 8, 2015, when winds came from the direction of Schiller Station in New Hampshire.

b. The DV for this site is invalid due to incomplete data for this period and is not for use in comparison to the NAAQS.

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<sup>9</sup> Data retrieved from <https://www.epa.gov/air-trends/air-quality-design-values#report>, accessed on November 1, 2018.

The data presented in Table 2 show that Maine’s network of SO<sub>2</sub> monitors with data sufficient to produce valid 1-hour SO<sub>2</sub> design values indicates that monitored 1-hour SO<sub>2</sub> levels in Maine are between 1% and 12% of the 75 parts per billion (ppb) level of the NAAQS. As shown, there are no Maine monitors located within 50 km of a neighboring state’s border. The nearest monitor is approximately 57 km from New Hampshire. Two monitors in New Hampshire are located within 50 km of the Maine border, and these monitors recorded SO<sub>2</sub> design values ranging between 20% and 21% of the 2010 SO<sub>2</sub> NAAQS. Thus, these air quality data do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO<sub>2</sub> emission sources in Maine that might significantly contribute to nonattainment in the neighboring states. However, because the monitoring network is not necessarily designed to find all locations of high SO<sub>2</sub> concentrations, this observation indicates an absence of evidence of impact at these locations but is not sufficient evidence by itself of an absence of impact at all locations in the neighboring states. We have therefore also conducted a source-oriented analysis. As noted, EPA finds that it is appropriate to examine the impacts of emissions from stationary sources in Maine in distances ranging from 0 km to 50 km from the facility, based on the “urban scale” definition contained in appendix D to 40 CFR part 58, Section 4.4. The list of Maine sources of 100 tons per year (tpy) or greater of SO<sub>2</sub> within 50 km from state borders is shown in Table 3 below.

Table 3: Maine SO <sub>2</sub> Sources Near Neighboring States				
Maine source	2016 SO <sub>2</sub> emissions (tons) <sup>a</sup>	Nearest distance to Maine/New Hampshire border	Distance to nearest neighboring state major SO <sub>2</sub> source <sup>b</sup> (km)	Nearest neighboring state major source SO <sub>2</sub> emissions <sup>c</sup> (tons)
Catalyst Paper Operations, Inc. in Rumford	846	38	168 (Dartmouth College in Hanover, NH)	246 (Dartmouth College)
S.D. Warren	198	50	74 (Newington Station	304 total

Company in Westbrook			and Schiller Station in Newington and Portsmouth, NH, respectively)	(Newington Station (41) and Schiller Station (263))
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- a. See [https://www.maine.gov/dep/ftp/AIR/DATA/CAP\\_SUMMARIES/](https://www.maine.gov/dep/ftp/AIR/DATA/CAP_SUMMARIES/), accessed on November 1, 2018.
- b. A source emitting 100 tons per year (tpy) or greater of SO<sub>2</sub> emissions.
- c. Emission data from Dartmouth College are for the year 2014. Emission data for Schiller and Newington Station are for the year 2017.

Table 3 identifies the nearest out-of-state source emitting above 100 tpy of SO<sub>2</sub>, because elevated levels of SO<sub>2</sub>, to which SO<sub>2</sub> emitted in Maine may have a downwind impact, are most likely to be found near such sources. The distances to these sources are listed because the impact of the sources in Maine decreases with distance. In the case of Catalyst Paper, the distance between this source and the Maine/New Hampshire state border is 38 km and the nearest major SO<sub>2</sub> source in neighboring state New Hampshire is 168 km. With regards to S.D. Warren, the distance between this source and the Maine/New Hampshire state border is 50 km and the nearest major SO<sub>2</sub> sources in neighboring state New Hampshire is 74 km. This information indicates that emissions from Maine are very unlikely to contribute significantly to problems with attainment of the 2010 SO<sub>2</sub> NAAQS in New Hampshire.

EPA also reviewed the location of sources in New Hampshire emitting more than 100 tpy of SO<sub>2</sub> and located within 50 km of the Maine border and found that the only sources that meet these criteria are Schiller and Newington Stations. The interaction between these sources and sources in Maine has been addressed in the discussion of Table 3.

In addition to analyzing the distances between sources emitting 100 tons per year of SO<sub>2</sub>, EPA acknowledges that New Hampshire, as required by the 40 CFR part 51, subpart BB (SO<sub>2</sub> Data Requirements Rule), provided air quality modeling information. The New Hampshire modeling indicated that emissions allowed under new, federally-enforceable emissions limits included in state air permits for Newington and Schiller Stations and emissions from some other



sources that were explicitly represented in the modeling, combined with a representative background concentration that reflects the impact of sources that were not explicitly represented in the modeling, would not result in a violation of the NAAQS in the portions of New Hampshire, Maine, and Massachusetts that were included in the modeling domain.<sup>10</sup> Given that there are no NAAQS violations within the modeling domain, we conclude that sources in Maine are not significantly contributing to NAAQS violations in the New Hampshire or Massachusetts portion of the domain. In addition, the modeling provided no suggestion that violations are occurring beyond the edge of the modeling domain.

EPA also analyzed whether any sources within Maine are significantly contributing to violations in the Central New Hampshire nonattainment area. The Central New Hampshire nonattainment area is approximately 20 km from the Maine state border. The nearest Maine source with SO<sub>2</sub> emissions greater than 100 tpy is in Westbrook Maine, approximately 82 km away. In its attainment plan for the Central New Hampshire nonattainment area, New Hampshire included air dispersion modeling to establish federally enforceable SO<sub>2</sub> emission limits for Merrimack Station in Bow, New Hampshire, the main contributor to the nonattainment area. New Hampshire demonstrated that with these emission limits in place there will be no NAAQS violations within the nonattainment area. *See* 82 FR 45242 (September 28, 2017).<sup>11</sup> As already noted, recent monitoring data from 2013-2017 indicates no NAAQS violations within the nonattainment area. Thus, we propose to conclude that sources in Maine are not significantly contributing to NAAQS violations in the nonattainment area.

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<sup>10</sup> A detailed description of EPA's assessment of the modeling, and associated visualizations, are available in Chapter 27 of the Technical Support Document for EPA's Intended Round 3 Area Designations for the 2010 1-Hour SO<sub>2</sub> Primary National Ambient Air Quality Standard for New Hampshire, included in this docket, number EPA-R01-OAR-2018-0637. *See* 82 FR 41903 (September 5, 2017). In referencing EPA's Intended Round 3 Area Designations, EPA is not reopening the SO<sub>2</sub> area designations action. A notice of the final rule for these designations was published on January 9, 2018. *See* 83 FR 1098.

<sup>11</sup> In referencing EPA's approval of New Hampshire's plan and attainment demonstration for the Central New Hampshire Nonattainment Area, EPA is not reopening the nonattainment area plan approval action. A notice of the final rule for the plan approval was published on June 5, 2018. *See* 83 FR 25922.

Given the localized range of potential 1-hour SO<sub>2</sub> impacts and the analysis of sources emitting at least 100 tpy of SO<sub>2</sub>, along with modeling analysis provided to EPA for other CAA purposes, EPA proposes to conclude that SO<sub>2</sub> emissions from Maine will not will not contribute significantly to nonattainment of the SO<sub>2</sub> NAAQS in New Hampshire and Massachusetts.

c. EPA's Prong 2 Evaluation

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state. Given the trend of decreased emissions from sources within Maine to date, as shown in Table 1, and our conclusion that there are no current violations of the SO<sub>2</sub> NAAQS in the portions of the neighboring states that are near Maine, EPA believes that a reasonable analysis of whether sources or other emissions activity originating within Maine interfere with its neighboring states' ability to maintain the NAAQS consists of evaluating whether these decreases in emissions can be maintained over time.

As shown in Table 4, the combined SO<sub>2</sub> emissions from the two largest categories, Fuel Combustion: Other category (home heating oil) and Fuel Combustion: Industrial, was 79% of total SO<sub>2</sub> state-wide emissions.

Table 4: Summary of 2014 National Emissions Inventory (NEI) SO <sub>2</sub> Data for Maine	
Category	Emissions (tons per year)
Fuel Combustion: Electric Utilities	928
Fuel Combustion: Industrial	4,042
Fuel Combustion: Other	4,842
Waste Disposal and Recycling	627
Other Industrial Process	433
Highway Vehicles	152
Off-Highway	197
Miscellaneous	40
Petroleum & Related Industries	19
Total	11,280

When compared to the year 2014, the SO<sub>2</sub> emissions from both households and industrial sources are expected to be significantly reduced<sup>12</sup> due to 38 MRSA Chapter 603-A, which established, effective as of January 1, 2018, statewide sulfur limits of 15 parts per million (ppm) for distillate oil and 0.5% by weight for residual oil. As stated earlier, EPA incorporated this statute into Maine's SIP on April 24, 2012. *See* 77 FR 24385.

As shown in Table 1, statewide SO<sub>2</sub> emissions in Maine have decreased over time. A number of factors are involved that caused this decrease in emissions, including the State's adoption of 38 MRSA Chapter 603-A and the change in capacity factors at EGUs in Maine over time due to increased usage of natural gas to generate electricity in the region. Actual SO<sub>2</sub> emissions from the facilities currently operating in Maine have decreased between 2000 and 2017, and EPA concludes based on this trend that emissions originating in Maine are not expected to interfere with the neighboring states' ability to maintain the 2010 SO<sub>2</sub> NAAQS.

Lastly, any new or modified major sources of SO<sub>2</sub> emissions will be addressed by Maine's SIP-approved Prevention of Significant Deterioration (PSD) program, last amended on August 1, 2016. *See* 81 FR 50353. Future minor sources of SO<sub>2</sub> emissions will be addressed by the State's minor new source review permit program, last amended on March 23, 1993. *See* 58 FR 15430. The permitting regulations contained within these programs, along with the other factors already discussed, are expected to help ensure that ambient concentrations of SO<sub>2</sub> in neighboring states will not exceed the NAAQS as a result of new facility construction or modification occurring in Maine.

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<sup>12</sup> The State statute required that most industrial sources that combust fuel oil to lower the sulfur content from 2% to 0.5%, a 75% reduction. The statute requires distillate oil, mainly used in homes, to be reduced from home heating oil went from 5,000 ppm to 15 ppm by weight, a 99% reduction.

It is also worth noting air quality trends for concentrations of SO<sub>2</sub> in the Northeastern United States.<sup>13</sup> This region has experienced an 84% decrease in the annual 99<sup>th</sup> percentile of daily maximum 1-hour averages between 2000 and 2017 based on 40 monitoring sites, and the most recently available data for 2017 indicates that the mean value at these sites was 12.9 ppb, which is less than 18% of the NAAQS. When this trend is evaluated alongside the monitored SO<sub>2</sub> concentrations within Maine as well as the SO<sub>2</sub> concentrations recorded at monitors in New Hampshire, EPA does not believe that sources or emissions activity from within Maine are significantly different than the overall decreasing monitored SO<sub>2</sub> concentration trend in the Northeast region. As a result, EPA finds it unlikely that sources or emissions activity from within Maine will interfere with other states' ability to maintain the 2010 primary SO<sub>2</sub> NAAQS.

Based on each of factors contained in the prong 2 maintenance analysis above, EPA proposes to find that sources or other emissions activity within Maine will not interfere with maintenance of the 2010 primary SO<sub>2</sub> NAAQS in any other state.

## *2. Sub-element 2: Section 110(a)(2)(D)(i)(II) – PSD (prong 3)*

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. One way for a state to meet this requirement, specifically with respect to in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied through a fully-approved NNSR program with respect to any previous NAAQS. EPA last approved revisions to Maine's NNSR regulations on February 14, 1996 (61 FR 5690).

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<sup>13</sup> See <https://www.epa.gov/air-trends/sulfur-dioxide-trends>, accessed on November 1, 2018.

To meet the requirements of Prong 3, ME DEP cites to its PSD permitting programs under 06-096 CMR Chapter 115, “Major and Minor Source Air Emission License Regulations,” to ensure that new and modified major sources of emissions do not contribute significantly to nonattainment, or interfere with maintenance, of any NAAQS. As noted above in our discussion of Element C, Maine’s PSD program fully satisfies the requirements of EPA’s PSD implementation rules. Consequently, we propose to approve Maine’s infrastructure SIP submission for the 2010 SO<sub>2</sub> NAAQS related to section 110(a)(2)(D)(i)(II) Prong 3 for the reasons cited under Element C.

*3. Sub-element 3: Section 110(a)(2)(D)(i)(II) – Visibility protection (prong 4)*

Prong 4 requires a state’s SIP to have adequate provisions prohibiting emissions in amounts that will interfere with measures in other states’ SIPs to protect visibility. The prong 4 requirement is closely connected to the regional haze program under part C of the CAA, in which states work together in a regional planning process to determine each state’s contribution to the visibility impairment in that region and agree to emission reduction measures to improve visibility. Maine is a member of the Mid-Atlantic/North East Visibility Union. EPA regulations require that a state participating in a regional planning process include in its regional haze SIP all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. *See, e.g.*, 40 CFR 51.308(d)(3). Thus, a fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency’s jurisdiction are not interfering with measures required to be included in other air agencies’ plans to protect visibility and will, therefore, satisfy Prong 4. EPA approved Maine’s Regional Haze SIP on April 24, 2012 (77 FR 24385). Accordingly, EPA proposes that Maine meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2010 SO<sub>2</sub> NAAQS.

*4. Sub-element 4: Section 110(a)(2)(D)(ii) – Interstate pollution abatement*

This sub-element requires each SIP to contain provisions requiring compliance with requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA-approved regulations require the ME DEP to provide pre-construction notice of new or modified sources to, among others, “any State . . . whose lands may be affected by emissions from the source or modification.” *See* 06-096 CMR Chapter 115, § IX(E)(3), approved March 23, 1993 (58 FR 15422). These provisions are consistent with EPA’s PSD regulations and require notice to affected states of a determination to issue a draft PSD permit. Regarding section 126(b), no source or sources within the state are the subject of an active finding with respect to the 2010 SO<sub>2</sub> NAAQS. Consequently, EPA proposes to approve Maine’s infrastructure SIP submittals for this sub-element with respect to the 2010 SO<sub>2</sub> NAAQS.

*5. Sub-element 5: Section 110(a)(2)(D)(ii) – International pollution abatement*

This sub-element requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA section 115 relating to international pollution abatement. There are no final findings under section 115 against Maine with respect to the 2010 SO<sub>2</sub> NAAQS. Therefore, EPA proposes to find that Maine meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 for the 2010 SO<sub>2</sub> NAAQS.

*E. Section 110(a)(2)(E) – Adequate resources*

This section requires each state to provide for personnel, funding, and legal authority under state law to carry out its SIP and related issues. In addition, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128.

Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is inapplicable to this action, because Maine does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

*1. Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues*

Maine, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. Maine cites to 38 MRSA § 341-A, “Department of Environmental Protection,” 38 MRSA § 341-D, “Board responsibilities and duties,” 38 MRSA § 341-H, “Departmental rulemaking,” 38 MRSA § 342, “Commissioner, duties,” and 38 MRSA § 581, “Declaration of findings and intent.” These statutes provide the ME DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2010 SO<sub>2</sub> NAAQS. Additionally, state law provides ME DEP with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. Maine also receives CAA sections 103 and 105 grant funds through Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out SIP requirements. The ME DEP states that these funding sources provide it with adequate resources to carry out the SIP. Therefore, EPA proposes to find that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2010 SO<sub>2</sub> NAAQS.

*2. Sub-element 2: State board requirements under section 128 of the CAA*

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. Section 128(a) contains two explicit requirements: 1) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and 2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

As mentioned earlier, the ME DEP consists of a Commissioner and a Board of Environmental Protection (“BEP” or “Board”), which is an independent authority under state law that reviews certain permit applications in the first instance and also renders final decisions on appeals of permitting actions taken by the Commissioner as well as some enforcement decisions by the Commissioner. Because the Board has authority under state law to hear appeals of some CAA permits and enforcement orders, EPA considers that the Board has authority to “approve” those permits or enforcement orders, as recommended in the 2013 Guidance. For this reason, and because the Board also issues some permits directly, the requirement of CAA section 128(a)(1) applies to Maine—that is, that “any board or body which approves permits or enforcement orders members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter.”

Pursuant to state law, the BEP consists of seven members appointed by the Governor, subject to confirmation by the State Legislature. *See* 38 MRSA § 341-C(1). The purpose of the Board “is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.” *Id.* § 341-B. State law further



provides that Board members “must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of” Maine’s environmental laws and that “[a]t least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.” *Id.* § 341-C(2). EPA proposes to find that these provisions fulfill the requirement that at least a majority of Board members represent the public interest, but do not address the requirement that at least a majority “not derive any significant portion of their income from persons subject to” air permits and enforcement orders. Furthermore, section 341-C is not currently in Maine’s SIP. In a letter dated March 1, 2018 (extended to pertain to the 2012 SO<sub>2</sub> NAAQS in a letter dated October 29, 2018), the ME DEP committed to revise section 341-C to address the CAA section 128(a)(1) requirement that at least a majority of Board members “not derive a significant portion of their income from persons subject to” air permits or enforcement orders and to submit, for inclusion in the SIP, the necessary provisions to EPA within one year of EPA final action on its infrastructure SIPs for the 2008 lead (Pb), 2008 ozone, and 2010 nitrogen dioxide (NO<sub>2</sub>) NAAQS. Final action on these SIPs was published on June 18, 2018 (83 FR 28157). Consequently, EPA proposes to conditionally approve Maine’s infrastructure SIP submittal for this requirement of CAA section 128(a)(1) for the 2010 SO<sub>2</sub> NAAQS.

As noted above, section 128(a)(2) of the Act provides that “any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.” As EPA has explained in other infrastructure SIP actions, the purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the ultimate decision maker in permit or enforcement order decisions. *See, e.g.,* 80 FR 42446, 42454 (July 17, 2015). Although the Board is the ultimate decision maker on air permitting decisions in Maine, certain air enforcement orders of the DEP Commissioner are not reviewable by the Board, but rather

may be appealed directly to Maine Superior Court. For this reason, EPA interprets the conflict of interest requirement of CAA section 128(a)(2) to be applicable in Maine to both Board members and the DEP Commissioner.

In a recent infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS, EPA determined that Maine's conflict of interest statute, 5 MRSA § 18, and a provision explicitly making it applicable to Board members, 38 MRSA § 341-C(7), together satisfy the CAA section 128(a)(2) requirement for Maine with respect to Board members, and EPA approved both statutes into the Maine SIP. *See* 83 FR 28157 (June 18, 2018). For more information, *see* 83 FR 12905, 12912 (March 26, 2018). EPA proposes to find that Maine's SIP also satisfies CAA section 128(a)(2) with respect to Board members for the 2010 SO<sub>2</sub> NAAQS for the same reasons.

Regarding the DEP Commissioner, state law at 38 MRSA § 341-A(3)(D) also explicitly makes that official subject to 5 MRSA § 18, the same conflict-of-interest statute to which the Board is subject. In the above-referenced multi pollutant infrastructure SIP action, EPA determined that 5 MRSA § 18, which is in the Maine SIP, and 38 MRSA § 341-A(3)(D), which is not currently in the SIP, together satisfy the conflict of interest requirement with respect to the DEP Commissioner. *See* 83 FR 28157 (June 18, 2018); 83 FR 12905, 12912 (March 26, 2018). While 38 MRSA § 341-A(3)(D) is not currently in the SIP, ME DEP has already committed to submitting it to EPA for inclusion within one year of EPA's final action on Maine's infrastructure SIP submissions for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS. *See* 83 FR 28157 (June 18, 2018). Consequently, EPA proposes to conditionally approve Maine's infrastructure SIP submissions for the conflict of interest requirement of CAA section 128(a)(2) with respect to the DEP Commissioner for the 2010 SO<sub>2</sub> NAAQS.

*F. Section 110(a)(2)(F) – Stationary source monitoring system*

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards. Lastly, the reports shall be available at reasonable times for public inspection.

Maine's infrastructure submittal references existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. First, Maine references 06-096 CMR Chapter 115, "Major and Minor Source Air Emission License Regulations." This regulation contains compliance assurance requirements regarding emissions monitoring and reporting for licensed sources.

Maine also references 06-096 CMR Chapter 117, "Source Surveillance," which specifies air emission sources required to install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS) and to submit periodic reports to EPA. Chapter 137 was approved into the SIP by EPA on March 21, 1989 (54 FR 11524).

In addition, Maine's emission statement rule, at 06-096 CMR Chapter 137, requires certain facilities to report emissions of air pollutants on an annual basis. EPA most recently approved revisions to Chapter 137 into the SIP on November 21, 2007. *See* 73 FR 65462. We further note that 38 MRSA § 347-C, "Right of inspection and entry," (referenced in ME DEP's submission with respect to enforcement under element C) authorizes ME DEP to inspect facilities, take samples, inspect records, and conduct tests as appropriate to determine compliance with permits, orders, regulations, and laws. Finally, by letter dated March 1, 2018 (extended to pertain to the 2010 SO<sub>2</sub> NAAQS in a letter dated October 29, 2018), ME DEP also certified that there are no

provisions in Maine law that would prevent the use of any credible evidence of noncompliance, as required by 40 CFR 51.212.

Regarding the section 110(a)(2)(F)(iii) requirements that the SIP provide for the correlation and public availability of emission reports, the ME DEP uses a web-based electronic reporting system, the Maine Air Emissions Inventory Reporting System (“MAIRIS”), for this purpose that allows it to package and electronically submit reported emissions data to EPA under the national emission inventory (NEI) program. NEI data are available to the public.<sup>14</sup> The MAIRIS system is structured to electronically correlate reported emissions with permit conditions and other applicable standards and identify all inconsistencies and potential compliance concerns.

Pursuant to ME DEP’s EPA-approved regulations, “Except as expressly made confidential by law; the commissioner shall make all documents available to the public for inspection and copying including the following: 1. All applications or other forms and documents submitted in support of any license application: 2. All correspondence, into or out of the Department, and any attachments thereto....” *See* 06-096 CMR Chapter 1, § 6(A). Furthermore, “The Commissioner shall keep confidential only those documents which may remain confidential pursuant to 1 MRSA Section 402.” *Id.* § 6(B). We also note that the Maine Freedom of Access Law does not expressly make emissions statements confidential, 1 MRSA § 402, and that, pursuant to ME DEP’s EPA-approved regulations, “[i]nformation concerning the nature and extent of the emissions of any air contaminant by a source”—which includes emission reports—“shall not be confidential.” *See* 06-096 CMR Chapter 115, § IX(B)(1). By letter dated March 1, 2018, extended to pertain to the 2010 SO<sub>2</sub> NAAQS in a letter dated October 29, 2018, Maine further certified that Maine’s Freedom of Access law does not include any exceptions that apply to stationary source emissions.

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<sup>14</sup> *See* [www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei](http://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei).

For the above reasons, EPA proposes to approve Maine's submittals for the requirements of section 110(a)(2)(F) for the 2010 SO<sub>2</sub> NAAQS.

*G. Section 110(a)(2)(G) – Emergency powers*

This section requires that a plan provide for state authority comparable to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” Section 303 further authorizes the Administrator to issue “such orders as may be necessary to protect public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection... by commencement of such civil action.”

We propose to find that a combination of state statutes and regulations discussed in ME DEP's April 19, 2017 submittal and a March 1, 2018 letter (extended to apply to the 2010 SO<sub>2</sub> NAAQS in a letter dated October 29, 2018) provides for authority comparable to that in CAA section 303. The statutes and regulations are: 38 MRSA § 347-A, “Emergency Orders,” 38 MRSA § 348, “Judicial Enforcement,” 37-B MRSA § 742, “Emergency Proclamation,” 38 MRSA § 591, “Prohibitions,” and 06-096 CMR Chapter 109, “Emergency Episode Regulations.” In our proposal to approve this requirement for Maine's 2012 PM<sub>2.5</sub> infrastructure SIP submission, we explained how this combination of authorities provides ME DEP with authority comparable to that in CAA section 303. *See* 83 FR 39957, 39966-39967 (August 13, 2018). These statutes and the regulation apply in the same manner to SO<sub>2</sub> emissions as they do to particulate matter emissions. Accordingly, for the reasons contained in our proposal to approve this element for the 2012 PM<sub>2.5</sub> infrastructure SIP, we propose to find that this combination of

state statutes and regulations provide for authority comparable to that in CAA section 303 for the 2010 SO<sub>2</sub> infrastructure SIP.

Section 110(a)(2)(G) also requires that, for any NAAQS, states have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). As relevant to this proposed rulemaking action, three of the five AQCRs in Maine are classified as IA or II for sulfur oxides (SO<sub>x</sub>). *See* 40 CFR 52.1021. Consequently, Maine's SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to SO<sub>x</sub>.

Maine's submittal cites to 06-096 CMR Chapter 109, "Emergency Episode Regulations," which specifies episode criteria for, and emission control measures to be implemented during, air pollution alerts, warnings, and emergencies to prevent ambient pollution concentrations from reaching significant harm levels (*see* 40 CFR 51.152(a)(1), (3)), and is very closely modeled on EPA's example regulations for contingency plans at 40 CFR part 51, appendix L. EPA last approved 06-096 CMR Chapter 109 into Maine's SIP in 1995. *See* 60 FR 2885 (January 12, 1995). As stated in Maine's infrastructure SIP submittal under the discussion of public notification (Element J), Maine also, as a matter of practice, posts on the internet daily air quality forecasts to the public levels through the EPA AirNow and EPA EnviroFlash systems.

Information regarding these two systems is available on EPA's website at [www.airnow.gov](http://www.airnow.gov).

Maine's participation in the AirNow and EnviroFlash programs addresses several of the public announcement and communications procedures and coordination with the National Weather Service included in the discussion of contingency plans in subpart H. *See* 40 CFR 51.152(a)(2), (b)(1), (b)(3).

In addition, 38 MRSA § 347-C, "Right of inspection and entry," which ME DEP cites under Element C of its infrastructure SIP submittal, provides employees and agents of the ME DEP the

authority to inspect sources of air pollution to determine compliance with laws administered by ME DEP. Thus, this authority allows the ME DEP to conduct the inspection of sources to ascertain compliance with any required emission control actions in accordance with 40 CFR 51.152(b)(2).

Therefore, EPA proposes that Maine, through the combination of statutes and regulations discussed above and participation in EPA's AirNow program, meets the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2010 SO<sub>2</sub> NAAQS.

#### *H. Section 110(a)(2)(H) – Future SIP revisions*

This section requires that a state's SIP provide for revision from time to time as may be necessary to take into account changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

To address this requirement, Maine's infrastructure submittal references 38 MRSA § 581, "Declaration of findings and intent," which characterizes the state's laws regarding the Protection and Improvement of Air as an exercise of "the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life." In addition, we note that ME DEP is required by statute to "prevent, abate and control the pollution of the air [, to] preserve, improve and prevent diminution of the natural environment of the State [, and to] protect and enhance the public's right to use and enjoy the State's natural resources." *See* 38 MRSA § 341-A(1). Furthermore, ME DEP is authorized to "adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering." *Id.* § 341-H(2); *see also id.*

§ 585-A (recognizing DEP's rulemaking authority to propose SIP revisions). These general authorizing statutes give ME DEP the power to revise the Maine SIP from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

Consequently, EPA proposes to find that Maine meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) for the 2010 SO<sub>2</sub> NAAQS.

*I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

*J. Section 110(a)(2)(J) - Consultation with government officials; public notifications; prevention of significant deterioration; visibility protection*

The evaluation of the submission from Maine with respect to the requirements of CAA Section 110(a)(2)(J) is described in the following sections.

*1. Sub-element 1: Consultation with government officials*

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) in carrying out NAAQS implementation requirements.

In a March 26, 2018, NPRM regarding infrastructure SIPs for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS, we explained how Maine satisfies this requirement. *See* 83 FR 12905. On June 18, 2018, we took final action approving those multi-pollutant infrastructure SIP submissions, including finding that Maine's SIP satisfies this sub-element. *See* 83 FR 28157. Based on the rationale contained in the March 26, 2018 document, EPA proposes that Maine meets this infrastructure SIP requirement with respect to the 2010 SO<sub>2</sub> NAAQS.



## *2. Sub-element 2: Public notification*

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

As mentioned elsewhere in this document, state law directs ME DEP to, among other things, “prevent, abate and control the pollution of the air . . . improve and prevent diminution of the natural environment of the State[, and] protect and enhance the public’s right to use and enjoy the State’s natural resources.” *See* 38 MRSA § 341-A(1). State law also authorizes ME DEP to “educate the public on natural resource use, requirements and issues.” *Id.* To that end, ME DEP makes real-time and historical air quality information available on its Web site.

Maine also provides extended-range air-quality forecasts, which give the public advanced notice of air quality events. This advance NPRM allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. The ME DEP forecasts daily ozone and particle levels and issues these forecasts to the media and to the public via its website, telephone hotline, and email. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public’s exposure. In addition, Air Quality Data Summaries of the year’s air-quality monitoring results are issued annually and posted on the ME DEP Bureau of Air Quality website. Maine is also an active partner in EPA’s AirNow and EnviroFlash air quality alert programs.

EPA proposes that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2010 SO<sub>2</sub> NAAQS.

## *3. Sub-element 3: PSD*

State plans must meet the applicable requirements of part C of the CAA related to PSD. Maine's PSD program in the context of infrastructure SIPs has already been discussed in sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we propose to approve the PSD sub-element of section 110(a)(2)(J) for the 2010 SO<sub>2</sub> NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

#### *4. Sub-element 4: Visibility protection*

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA, which includes sections 169A and 169B. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 Guidance, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIP submissions.

#### *K. Section 110(a)(2)(K) – Air quality modeling/data*

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA has interpreted section 110(a)(2)(K) to require a state to submit or reference the statutory or regulatory provisions that provide the air

agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request. *See* 2013 Guidance at 55.

Maine state law implicitly authorizes ME DEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* 38 MRSA §§ 341-A(1), 581, 591-B. In addition, Maine cites 06-096 CMR Chapters 115 and 140, which provide that any modeling required for pre-construction permits and operating permits for minor and major sources be performed consistent with EPA-prescribed modeling guidelines at 40 CFR part 51, appendix W. Chapter 115 also requires that applicants submit data related to modeling to ME DEP. *See* 06-096 CMR chapter 115, section VII.E. Consequently, the SIP provides for such air quality modeling as the Administrator has prescribed and for the submission, upon request, of data related to such modeling.

EPA proposes to find that Maine meets the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2010 SO<sub>2</sub> NAAQS.

*L. Section 110(a)(2)(L) – Permitting fees*

This section requires SIPs to mandate that each major stationary source pay permitting fees sufficient to cover the reasonable cost of reviewing, approving, implementing, and enforcing a permit.

Maine implements and operates a Title V permit program (*see* 38 MRSA § 353-A; 06-096 CMR Chapter 140) which was approved by EPA on October 18, 2001. *See* 66 FR 52874. To gain this approval, Maine demonstrated the ability to collect sufficient fees to run the program. *See* 61 FR 49289, 49291 (September 19, 1996). Maine state law provides for the assessment of application fees from air emissions sources for permits for the construction or modification of air contaminant sources and sets permit fees. *See* 38 MRSA §§ 353-A (establishing annual air emissions license fees) and 352(2)(E) (providing that such fees “must be assessed to support

activities for air quality control including licensing, compliance, enforcement, monitoring, data acquisition and administration”).

EPA proposes to find that Maine meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2010 SO<sub>2</sub> NAAQS.

*M. Section 110(a)(2)(M) – Consultation/participation by affected local entities*

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Maine’s infrastructure submittal references the Maine Administrative Procedure Act, 5 MRSA Chapter 375, and explains that it requires public notice of all SIP revisions prior to their adoption, which allows for comment by the public, including local political subdivisions. In addition, Maine cites 38 MRSA § 597, “Municipal air pollution control,” which provides that municipalities are not preempted from studying air pollution and adopting and enforcing “air pollution control and abatement ordinances” that are more stringent than those adopted by DEP or that “touch on matters not dealt with” by state law. Finally, Maine cites Chapter 9 of Maine’s initial SIP, which was approved on May 31, 1972 (37 FR 10842), and contains intergovernmental cooperation provisions.

EPA proposes to find that Maine meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2010 SO<sub>2</sub> NAAQS.

#### **IV. Proposed Action**

EPA proposes to approve Maine’s April 19, 2017 infrastructure SIP submission certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2010 SO<sub>2</sub> NAAQS, with the exception of CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, which we propose to conditionally approve, as described in more detail above. EPA’s proposed actions regarding these infrastructure SIP requirements are contained in Table 5.

Table 5: Proposed action on Maine's infrastructure SIP submittals	
Element	2010 SO <sub>2</sub>
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	A
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	A
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	CA
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	NG
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	NG
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve
CA	Approve but conditionally approve
NG	Not germane to infrastructure SIPs
NA	Not applicable

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the ADDRESSES section of this Federal Register. As noted in Table 5 of this document, EPA is proposing to conditionally approve one portion of Maine's April 19, 2017 infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS. The outstanding issue with this SIP revision pertains to element (E)(2) regarding State Boards and Conflicts of Interest.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its State Board rules that fully remedies the deficiency mentioned above under Element E. If the State fails to do so, this action will become a disapproval on (list the date if under a statutory requirement) or one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Maine SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the submission. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP element will also be disapproved at that time. If EPA approves the submittal, the infrastructure SIP element will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 17, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

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